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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

10 MARK A. HOLUM, an individual,)
11)
12 vs. Plaintiff,) No. CV-08-081-EFS
13)
14 EXTENDICARE HOMES, INC., a) DEFENDANTS' REPLY LR 56.1 IN
15 corporation; EXTENDICARE) OPPOSITION TO PLAINTIFF'S
16 HEALTH SERVICES, INC., a) STATEMENTS OF FACTS
17 corporation; and EXTENDICARE)
18 HEALTH FACILITIES, INC., a)
corporation,)
Defendants.)

19 The plaintiff's LR 56 Statement of Facts contains multiple inaccuracies and
20 allegations unsupported by the records to which they refer; many of the allegations are
21 wholly inadmissible under the Rules of Evidence and cannot be considered to create
22 an issue of fact to defeat summary judgment. FRCP 56(e). Defendants have moved
23 independently to strike the inadmissible portions of the accompanying declarations,

DEFENDANTS' REPLY LR 56.1 IN OPPOSITION
TO PLAINTIFF'S STATEMENTS OF FACTS -- 1

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1 and will not duplicate those objections for each statement of fact here; defendants
2 object to the following portions of plaintiff's statement of facts because they are not
3 supported by the portions of the record cited:
4

5 1. Contrary to plaintiff's fact No. 5, the Declaration of Michelle Rashka
6 cited does not state she "specifically" told The Gardens of Mr. Harris' "assaultive
7 behavior"; she testifies only that she "believes" she told unidentified persons about
8 Mr. Harris' behavior at the group home. (Rashka Decl., ¶13)
9

10 2. Contrary to plaintiff's Fact No. 12, no evidence of any written notice or
11 warning of Mr. Harris' "uncontrollable" behavior is contained in any
12 contemporaneous medical records provided by plaintiff, nor attached to the supporting
13 declarations cited.
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15 3. Contrary to plaintiff's Fact No. 14, Mr. Harris was admitted to Sacred
16 Heart Medical Center the morning of November 29th at 8:30, based on respiratory
17 problems, and returned to The Gardens two hours later; the contemporaneous medical
18 records provided by both plaintiff and defendants do not reflect any record of assaults
19 of staff prior to his short admission at SHMC. (See, Decl. of Gregg Calvert,
20 Exs. 6-11; Declarations of Sincerie Arnold and Sue Goodrick)
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1 4. Contrary to plaintiff's Fact No. 15, Mr. Calvert's testimony that the
 2 progress notes show no incidents of violence, or psychotic episodes, are true based on
 3 the progress notes attached to his declaration. Ms. Arnold and Ms. Rashka's
 4 testimony that there were "warnings" do not appear in any written or
 5 contemporaneous medical records. (See, Aff. of Gregg Calvert, Exs. 6-11;
 6 Declarations of Sincerie Arnold and Sue Goodrick)

7 5. Contrary to plaintiff's Fact No. 16, plaintiff presents no evidence that
 8 Sincerie Arnold's notations in Mr. Harris' records identify that Mr. Harris was a
 9 "danger." In fact, in the same document on which Ms. Arnold relies to support her
 10 claim of Mr. Harris' deterioration, she also specifically indicated Mr. Harris had no
 11 incidents in the last seven days of verbally abusive or physically abusive behavior
 12 (Decl. of Gregg Calvert, Ex. 6). Nothing in Ex. P-2 to the Declaration of Sincerie
 13 Arnold, also cited, identifies danger to staff or residents.

14 6. Contrary to plaintiff's Fact No. 19, the Declaration of Ms. Goodrick cited
 15 does not state that "on multiple occasions, before November 29, 2004 the Director and
 16 Administrative Director at The Gardens were told that T.H. was going to hurt
 17 someone," and needed to be removed. (See, Decl. of Sue Goodrick, ¶18)

1 7. Contrary to plaintiff's Fact No. 26, Mr. Harris was not admitted to the
 2 Sacred Heart Medical Center on November 29 at 8:30 a.m. for "dangerous and
 3 unmanageable behavior". Instead, the records reflect that Mr. Harris was admitted to
 4 Sacred Heart Medical Center for increased secretions, treated on a non-urgent basis,
 5 and released as stable less than two hours later at 10:30. (Aff. of Gregg, Ex. 11; Decl.
 6 of Sincerie Arnold, Ex. P. 5)

7 8. Contrary to plaintiff's Fact No. 29, Mr. Harris did not engage in
 9 "multiple assaults" on the staff. On November 29th, the contemporaneous medical
 10 records establish that his parents restrained him in his bed at 4:40 p.m., and that he
 11 kicked a staff member at 6:45 p.m. (Decl. of Sincerie Arnold, Ex. P-3)

12 9. Contrary to plaintiff's Fact No. 32, Ms. Goodrick does not testify that it
 13 was "certain that T.H. would become violent and would in fact assault other people."
 14 Ms. Goodrick instead testifies in her declaration that it was "reasonable to conclude,"
 15 that he was going to hurt himself, other residents or staff. (Decl. of Sue Goodrick,
 16 ¶19)

17 10. Contrary to plaintiff's Fact No. 33, changes were made to Mr. Harris'
 18 care once his physician was contacted; his doctor ordered medication and the entry in
 19 his chart after the first noted assault on November 29th indicated he was "resting
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1 quietly," had "marked ↓ of mucous" and "↓ level of agitation." (Aff. of Gregg
2 Calvert, Ex. 11)

3 DATED this 27th day of January, 2009.
4

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DEFENDANTS' REPLY LR 56.1 IN OPPOSITION
TO PLAINTIFF'S STATEMENTS OF FACTS -- 5

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1 I hereby certify that on January 27, 2009, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the following:
4

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DEFENDANTS' REPLY LR 56.1 IN OPPOSITION
TO PLAINTIFF'S STATEMENTS OF FACTS -- 6

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